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Counsel for Defendant Chart Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

Case No. 3:18-cv-01586-JSC

**DEFENDANT CHART INC.'S
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL**

N.D. Cal. Local Rules 7-11 and 79-5

Judge: Hon. Jacqueline Scott Corley

No Hearing Set Pursuant to L.R. 7-11(c)

TO THE COURT, THE PARTIES, AND ALL COUNSEL FOR RECORD:

PLEASE TAKE NOTICE that Chart Inc. will and does hereby move the Court, pursuant to Civil Local Rule 79-5, for an administrative order to file the following documents or portions thereof under seal:

- Declaration of Kevin M. Ringel in Support of Chart's Notice of Motion and Motion to Exclude Plaintiffs' Expert Dr. Elizabeth Grill;
- Exhibits A to D to the Ringel Declaration in Support of Chart's Motion to Exclude Plaintiffs' Expert Dr. Elizabeth Grill;
- Declaration of Kevin M. Ringel in Support of Chart's Notice of Motion and Motion to Exclude Plaintiffs' Experts Anand Kasbekar and David Wininger;
- Exhibits A to K to the Ringel Declaration in Support of Chart's Motion to Exclude Plaintiffs' Experts Anand Kasbekar and David Wininger;
- Declaration of Kevin M. Ringel in Support of Chart's Notice of Motion and Motion for Summary Judgment;
- Exhibits A to F of the Ringel Declaration in Support of Chart's Motion for Summary Judgment.

Defendant files this motion to comply with the Stipulated Protective Order (EFC No. 104) and Civil Local Rule 79-5. Pursuant to Civil Local Rules 79-5 and 7-11(c), no hearing date has been set.

Material to be Filed Under Seal

Paragraph 12.3 of the Stipulated Protective Order prohibits a party from filing in the public record any disclosure or discovery material that is designated as confidential or highly confidential ("Protected Material") without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons. Protected Material includes portions of pleadings that contain, summarize, or reflect the Protected Material. ECF No. 104 at ¶ 12.3.

1 **Materials Designated by Plaintiffs and Non-Party Pacific MSO.** Plaintiffs and non-
 2 party Pacific MSO have designated the following documents or portions thereof as Confidential
 3 or Highly Confidential under the Stipulated Protective Order: the October 9, 2019 Deposition of
 4 Joseph Conaghan; the Expert Report of Dr. David Wininger, and certain documents produced in
 5 the course of discovery, including the medical records of certain named Plaintiffs. Pursuant to
 6 Local Rules 79-5(d)(1) and (2), the Designating Parties are responsible for establishing that all of
 7 the designated materials are sealable. Chart takes no position on whether these materials should
 8 remain under seal.
 9

10 **Materials Designated by Chart.** Additionally, Chart has designated its expert reports as
 11 Confidential or Highly Confidential under the Stipulated Protective Order. These reports contain
 12 confidential information relating to Chart's business operations, processes, and functions. Courts
 13 have routinely recognized the need to protect from disclosure confidential business information
 14 like the information sought to be sealed here. *See, e.g., Huawei Techs., Co., Ltd. v. Samsung Elecs.*
 15 *Co., Ltd.*, 2017 WL 1508756, at *1 n.1 (N.D. Cal. Apr. 27, 2017) (granting party's administrative
 16 motion to file under seal confidential business information, including internal meeting minutes and
 17 excerpts from the party's opposition motion); *Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*,
 18 2014 WL 12700984, at *1 n.1 (N.D. Cal. Oct. 3, 2014) (granting defendant corporation's
 19 administrative motion to file under seal document containing sensitive business information).
 20
 21

22 Moreover, disclosure of such commercially sensitive business information would allow
 23 potential competitors to gain insight into how Chart conducts its operations and business
 24 relationships such that its business could be significantly and irreparable harmed. In such
 25 circumstances, courts have granted a party's request to file such information under seal. *See, e.g.,*
 26 *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (ordering sealing where documents
 27
 28

1 could be used “as sources of business information that might harm a litigant’s competitive
2 standing”) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *Contreras v.*
3 *Portfolio Recovery Assocs., LLC*, 2017 WL 2964012, at *6 (N.D. Cal. Jul. 12, 2017) (holding
4 that the release of documents that might harm defendant’s competitive business strategy
5 constituted a compelling reason to file such documents under seal). Chart’s request to seal the
6 above-identified documents is narrowly tailored to only those portions that merit sealing.

8 To the extent that Chart’s Motion to Exclude Dr. Grill and Motion to Exclude Kasbekar
9 and Wininger reference information or documents designated as Confidential or Highly
10 Confidential, those references are also Confidential or Highly Confidential and should
11 accordingly be filed under seal. *See, e.g., Autodesk, Inc. v. Alter*, 2017 WL 1862505, at *8 (N.D.
12 Cal. May 9, 2017) (granting administrative motion to file under seal a confidential licensing
13 agreement between the parties and portions of the defendant’s opposition that referenced that
14 agreement); *Finjan, Inc. v. Proofpoint, Inc.*, 2016 WL 7911651, at *4 (N.D. Cal. Apr. 6, 2016)
15 (permitting defendant to file portions of brief under seal when those portions referred to
16 documents containing information on the “operation of [d]efendants’ products, including
17 technical information an source code” and finding that if such information were disclosed,
18 “there could be a risk that competitors would reproduce or recreate features of [D]efendants’
19 products.”).

22 Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this
23 motion:
24

- 25 1. Ringel Declaration in Support of Chart’s Motion to Exclude Dr. Elizabeth Grill;
- 26 2. Redacted and unredacted versions of Exhibits A-L to the Ringel Declaration in
27 Support of Chart’s Motion to Exclude Dr. Grill;
- 28

3. Ringel Declaration in Support of Chart's Motion to Exclude Anand Kasbekar and David Wininger;
4. Unredacted versions of Exhibits A-K to the Ringel Declaration in Support of Chart's Motion to Exclude Anand Kasbekar and David Wininger;
5. Ringel Declaration in Support of Chart's Motion for Summary Judgment;
6. Unredacted versions of Exhibits A-F to the Ringel Declaration in Support of Chart's Motion for Summary Judgment.

Dated: December 22, 2020

Respectfully submitted,

By: /s/ Kevin Ringel

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Counsel for Defendant Chart, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2020, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

Dated: December 22, 2020

Respectfully submitted,

By: /s/ Kevin Ringel

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